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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B2
PLR-117523-09

Date:
September 24, 2009

$$\underline{X} =$$

State =

A =B =C =Trust1 =Trust2 =Trust3 =Trust4 =Trust5 =D1 =D2 =D3 =D4 =D5 =

D6 =

Year1 =

Year2 =

Dear

This responds to a letter dated December 29, 2008, and subsequent correspondence submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State on D1 and elected to be an S corporation effective D2. Pursuant to an agreement dated D3, A and B established Trust1, a revocable trust treated as a wholly-owned grantor trust under §§ 671 and 676. A transferred shares of X stock to Trust1.

Pursuant to agreements dated D4, C established Trust2, Trust3, Trust4, and Trust5, one for each of C's four children. C transferred shares of X stock to Trust2, Trust3, Trust4, and Trust5. On D4, X's S corporation election terminated under § 1362(d) when Trust2, Trust3, Trust4, and Trust5 became shareholders of X because the trustees of the trusts failed to make electing small business trust (ESBT) elections for the trusts.

On D5, A died and Trust1 ceased to be a grantor trust. Trust1 continued to qualify as an eligible S corporation shareholder under § 1361(c)(2)(A)(ii) for the 2 year period beginning on the day of the deemed owner's death and ending on D6. On D6, X's S corporation election would have terminated under § 1362(d) had the election not already terminated on D4 because the trustee of Trust1 failed to make an ESBT election for the trust.

X represents that Trust1, Trust2, Trust3, Trust4, and Trust5 qualified to elect to be treated as electing small business trusts (ESBTs) under § 1361(e). X represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and not motivated by tax avoidance. X further represents that X has filed returns consistent with X's status as an S corporation. X and its shareholders have agreed to make such adjustments (consistent with the treatment of X as an S corporation) as may be required by the Secretary.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation (A) was not effective for the taxable year for which it was made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of

§ 1361(b) or to obtain shareholder consents, or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on D4 because Trust2, Trust3, Trust4, and Trust5 were not eligible shareholders of X. We also conclude that this termination of X's S election on D4 was an inadvertent termination within the meaning of § 1362(f). Moreover, had X's S corporation election not already terminated, it would have terminated on D6. Similarly, this termination of X's S election on D6 would have been an inadvertent termination within the meaning of § 1362(f).

Therefore, we conclude that X will continue to be treated as an S corporation for the period from D4 provided that X's S corporation election was valid and was not otherwise terminated under § 1362(d).

This ruling is conditioned upon the trustee of Trust1 filing an ESBT election for Trust1 with an effective date of D6, and the trustee for Trust2, Trust3, Trust4, and Trust5 filing an ESBT election for each trust with an effective date of D4. All elections must be filed with the appropriate service center within 60 days of the date of this ruling. This ruling is also conditioned upon Trust1 filing amended returns for Year1 and Year2 consistent with the treatment of Trust1 as an ESBT within 60 days following the date of this letter. A copy of this letter should be attached to the ESBT elections and the amended returns. If the trusts do not comply with these conditions, this letter is null and void.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed regarding X's eligibility to be an S corporation or the validity of its S corporation election. Further, no opinion is expressed as to whether Trust1, Trust2, Trust3, Trust4, and Trust5 qualify as ESBTs.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

Melissa C. Liquerman
Branch Chief, Branch 2
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: